

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California

Date: June 16, 2005

Resolution No. L-318

RESOLUTION**AUTHORIZING THE COMMISSION'S EXECUTIVE
DIRECTOR TO SUSPEND OR REVOKE THE OPERATING
AUTHORITY OF A HOUSEHOLD GOODS CARRIER UPON
CONVICTION OF THE CARRIER OR ONE OR MORE OF
ITS OFFICERS OF CERTAIN MISDEMEANORS OR
FELONIES INVOLVING THEFT OR DISHONESTY****BACKGROUND**

Pursuant to Division 2, Chapter 7 of the Public Utilities Code, the Commission regulates the transportation of used household goods by household goods carriers on the public highways in this state. No carrier may provide this service without first obtaining a permit from the Commission. The Consumer Protection and Safety Division evaluates the carrier's qualifications for a household goods carrier permit by checking the California Department of Justice's and Federal Bureau of Investigation's criminal records files for information about the applicant's criminal record. The Commission may refuse to issue a permit if the applicant has committed any act constituting dishonesty or fraud.

DISCUSSION

Despite the staff's best efforts to use the qualification process to screen out individuals that are likely to take advantage of customers if they were to be licensed, there are a number of household goods carriers that violate California laws and Commission regulations after they become licensed. A few carriers' conduct is so egregious that local authorities prosecute them for fraud and other unfair business practices.

The Commission is empowered to cancel, suspend or revoke the permit of a household goods carrier, without prior notice or opportunity to be heard in a formal evidentiary hearing, upon a misdemeanor conviction under Division 2,

Chapter 7 of the Public Utilities Code or upon the conviction of certain categories of felonies. Section 5285(d) reads: "The commission may cancel, suspend, or revoke the permit of any carrier upon the conviction of the carrier of any misdemeanor under this chapter while holding operating authority issued by the commission, or the conviction of the carrier or its officers of a felony while holding operating authority issued by the commission, limited to robbery, burglary, larceny fraud, or intentional dishonesty for personal gain."

We believe the cancellation, suspension or revocation of a household goods carrier's permit should occur immediately after conviction of a qualifying misdemeanor or felony so that the carrier's opportunity for further misconduct is minimized at the earliest possible date. For this reason, we are delegating to the Executive Director the authority to suspend or revoke the permit of a household goods carrier upon notification by the General Counsel of the Legal Division that the carrier or one or more of its officers has been convicted of a qualifying misdemeanor or felony. The Executive Director shall report a suspension or revocation of a household goods carrier permit ordered pursuant to this resolution to the Commission at the earliest Commission meeting after action is taken.

PROCEDURE

Resolution L-318 directs the Executive Director to suspend the operating authorities of household goods carriers on the basis of a verified report from the Commission's General Counsel that the carrier or one or more of its officers has been convicted of certain categories of felonies, or of misdemeanor violations of the Household Goods Carriers Act. The resolution further provides that the Executive Director shall give the carrier notice of any suspension and afford the carrier the opportunity to request a review of the suspension. If the carrier does not request a review, or the Executive Director denies the carrier's appeal, the Executive Director is directed to permanently revoke the carrier's operating authority.

In order to ensure fairness in the application of this procedure, the General Counsel shall obtain a written verification of the criminal conviction from the court wherein the carrier or officer(s) was convicted. The verification shall be limited to convictions that have occurred while the carrier has an active operating authority with the Commission. Guilty pleas or pleas of *nolo contendere* to covered offenses shall be considered to be convictions.

COMMENTS ON DRAFT RESOLUTION

Public Utilities Code § 311(g)(1) requires that proposed resolutions on these items be served on all parties and subject to at least 30 days public review and comment

before the Commission may vote on them. Section 311 (g)(3) and Rule 77.7.(f)(9) of the Rules of Practice and Procedure provide that the 30-day period may be reduced or waived by the Commission upon a finding of public necessity. The comment period on this item is being reduced to twelve days under this authority.

No comments were submitted on this proposed resolution.

FINDINGS OF FACT

1. Despite the best efforts of the Commission staff and the Commission to screen out individuals that are likely to engage in fraudulent or other unfair business practices, a few individuals receive permits to operate as household goods carriers and thereafter commit crimes which would disqualify them from receiving a permit if the crime had taken place before they applied for a Household Goods Carrier's permit.
2. The conduct of a few currently permitted household goods carriers is so egregious that local authorities prosecute and obtain convictions for fraud and other unfair business practices.
3. Delegation of authority to the Executive Director will allow staff to protect consumers from unfair and/or illegal business practices.
4. Prompt action by the staff is necessary for the protection of the public. The proposed resolution would permit the full implementation of the actions prescribed by the Public Utilities Code for household goods carriers.

CONCLUSIONS OF LAW

1. Public Utilities Code Section 5285(d) provides that this Commission may cancel, suspend or revoke the permit of a household goods carrier, without prior notice or opportunity to be heard through a formal hearing, when the carrier or its officers has been convicted of certain misdemeanors or felonies.
2. Pursuant to Section 7 of the Public Utilities Code, the Commission may delegate to the Executive Director the authority to suspend or revoke a household goods carrier's permit. The Executive Director's actions will be ministerial based upon the Commission's stated policy to implement Section 5285(d) at the earliest possible date to protect consumers.

ORDER DELEGATING AUTHORITY

1. The Executive Director shall suspend, pursuant to Section 5285(d) of the Public Utilities Code, the operating authority of any household goods carrier upon written notification from the Commission's General Counsel that the carrier or one or more of its officers has been convicted of a misdemeanor violation of the Household Goods Carriers Act or has been convicted of certain felonies, limited to burglary, larceny, robbery, fraud or intentional dishonesty for personal gain.
2. In order to ensure fairness in the application of this procedure, the General Counsel shall obtain a written verification of the criminal conviction from the court wherein the carrier or officer was convicted. The verification shall be limited to convictions that have occurred while the carrier has an active operating authority with the Commission. Guilty pleas or pleas of *nolo contendere* to covered offenses shall be considered to be convictions.
3. The Executive Director shall promptly furnish the carrier with written notice of any suspension of its operating permit. The notice of any such suspension shall inform the carrier that it may request a review of the suspension to the Executive Director within ten days of the date of the mailing of the notification.
4. The Executive Director shall respond to a request for review within ten days of receipt of said request, with a decision either affirming the suspension and permanently revoking the operating permit, reversing the suspension upon good cause shown, or continuing the suspension until the appeal of the underlying offense has been resolved or the time for filing such an appeal has expired.
5. The Executive Director shall be authorized to extend the period to render a decision on a request for review for up to 14 days if he or she finds that additional time is needed to investigate the carrier's appeal.
6. The suspension will become a permanent revocation of the carrier's operating authority if the carrier does not request a review within ten days of the mailing of the notice of suspension
7. Each suspension or revocation issued under authority of this resolution shall recite that it was issued pursuant to this resolution. Each such suspension or revocation, when signed by the Executive Director, shall be deemed to be the order of the Commission.

8. The Executive Director shall report to the Commission after taking action pursuant to this resolution at the earliest Commission meeting of the suspension or revocation of a household goods carrier permit. The Executive Director's report shall include a summary of a request for review made by the carrier and the disposition of the request.
9. Any household goods carrier whose permit is suspended and revoked pursuant to Section 5285(d) may thereafter reapply for authority to act as a household goods mover.
10. Resolution L-318 is enacted.

This resolution is effective today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of June 16, 2005 the following Commissioners approved it:

STEVE LARSON
Executive Director